

Rule 002 Annual Review Meetings and Penalties Consultation Meeting Summary

Meeting date	Tuesday, April 9, 2013	Time	10:00 a.m. to 2:30 p.m.
Location	AUC Edmonton office Twelfth floor, 10055 106 Street	Facilitator	AUC staff

1. Annual review meetings

- The AUC reminded the group that, during the October Rule 002 consultation meetings, there was consensus that the Rule 002 annual meetings should include the customer groups. The AUC then asked whether those meetings should be held at the AUC offices or at the distributors' offices. The distributors suggested that they should continue to host the meetings.
- Who calls and arranges the meetings?
 - One distributor proposed that the current practice of AUC staff scheduling the annual review meetings should continue. There was discussion about whether the AUC, when scheduling the meetings, should take into account other regulatory process schedules that could conflict and whether the AUC should avoid arranging the meetings back to back to allow more time for preparation between meetings. Generally there was consensus that conflicts are unavoidable and, since the meetings are not likely to take a full day, the AUC should schedule the meetings no more than one per day to allow time to prepare between meetings, with all of the Edmonton ones in one week and all of the Calgary ones in another for the convenience of those who must travel to one city or the other.
- How much notice should be given?
 - While discussing how much notice should be given to the companies and to the customer groups when arranging the meetings, the group indicated that they could manage with as little as 30 days but that more notice would be better.
- What should the timing be?
 - There was some debate as to when the meetings should be held. The companies expressed that they would be prepared to meet and to discuss the results right away after submitting their Rule 002 annual reports; however, the customer groups indicated that they would need time to consider the reports and prepare. The customer groups suggested that the meetings should occur after the Rule 005 financial results were filed in May.
 - The distributors urged against waiting for the Rule 005 results because by May the year would be almost half over before the annual review meeting for the previous year would take place, leaving little time for corrective action or mitigation plans to be put in place and for beneficial results to materialize for the next Rule 002 annual report.
 - Generally there was consensus that the Rule 002 annual review meetings should best be held towards the middle of April each year, affording all parties enough time to prepare.
 - The AUC requested that, in preparation for setting the schedule, the companies should notify the AUC of any significant dates to avoid in April that regularly occur, such as board meetings or other corporate events.

ACTION: To assist the AUC in scheduling the Rule 002 annual meetings, companies are to notify the AUC of any significant dates to avoid in April.

- Can questions be asked in advance of the meeting?
 - The group discussed process surrounding the meetings and whether an information request process would be beneficial. Should there be a technical meeting and rounds of IR-type questions and responses? Generally there was consensus that the Rule 002 annual meeting is similar to a technical meeting, and, therefore, no additional technical meeting would be required.
 - The companies expressed the view that that informal discussion is valuable. And while it may be helpful to know the concerns or questions of the customer groups in advance of the meetings, it would not be required. However, there should not be a requirement for distributors to make written responses to those questions in advance of the meetings.
- How transparent should the meetings be? Transcripts required?
 - There was discussion as to what record of the annual meeting should be kept, if any, and how it should be kept. On one hand, in order to avoid a debate later on, the suggestion was made that transcripts, while expensive, could prove useful; on the other hand if there are transcripts, people do not tend to speak as freely and the companies may feel the need to have their lawyers in attendance.
 - One customer group suggested that formal transcripts may not be of value but that meeting notes would be. Then the group debated about who should prepare the meeting notes. Some suggested that the AUC should prepare the meeting notes, while others suggested that it would be best for the host company to prepare its version of what transpired since the summary should reflect its answers to the questions.
- What happens if AUC decides (based on the meetings) that circumstances beyond the control of the companies existed; should it communicate that a proceeding is not planned? To whom?
 - This led to discussion regarding the purpose of the record of the annual review meeting. If an enforcement proceeding results from a company's failure to meet a service standard, is the annual review meeting record to be evidence for that enforcement proceeding? Some expressed that a report of some kind should result from the meeting, and this report should indicate whether or not the AUC intends to take any kind of enforcement action. The companies wanted the report to provide some form of certainty that no enforcement action would follow, and the customer groups wanted the report so that they would know whether or not they need to take further action. Since the report would not in any way be binding upon the Commission, some questioned the value of the report since enforcement action could ensue regardless of the outcome of these meetings.
- How do customer groups instigate a penalty proceeding? Deadlines?
 - The companies expressed their understanding that customer groups could request an enforcement proceeding by filing a complaint with the Commission and that this could be done at any time. There was some discussion about whether there should be a non-binding deadline that could serve as a standard practice of some kind, such as complaints regarding the previous year's service quality results must be made within 45 days of the annual review meeting. Since this deadline would not be binding in any way, the group decided against trying to impose such a deadline.
- Are there enforcement consequences for not attending the annual review meetings?
 - The group discussed whether or not customer group attendance at the annual review meeting should be a requirement for exercising rights to file a complaint. Similar to the concept of a complaint deadline, generally there was consensus that such a requirement could not be binding.

- Other issues discussed
 - The group discussed the need for an attestation of some kind from the officers of the reporting company as a means for customer groups and the Commission to feel more certainty regarding the accuracy of the data and the results contained in the report. Some companies responded that the cover letter of the report is already signed by management and that, with the complexity of the data involved in producing the report, it would be almost impossible for an officer to attest to the accuracy of each data input. Customer groups argued that there is equally complex data in a company's financial records, and officers must attest to their accuracy. However, companies indicated that the standards and reporting practices surrounding load settlement are not nearly as established as accounting processes applicable to financial records. The discussion concluded with general agreement not to require any form of attestation.
 - The companies pointed out that, if there was doubt as to the accuracy of the data, the Commission would always have the right to order an audit.
 - In order to resolve the need for meeting notes or a report of some kind, the group discussed the purpose of the meeting itself. Generally there was consensus that the meeting was not intended to be a discovery meeting prior to an enforcement proceeding, but rather a review of the company's past year and the Rule 002 annual report that describes its service quality performance. Informal discussion may be hampered by documentation of the meeting other than the Rule 002 annual report itself. The group finished this discussion by agreeing that the annual meeting is not intended as part of the enforcement process; rather, the annual review meeting and any enforcement proceeding should be separate processes.
 - One customer group suggested that the AUC should propose a straw model for the annual review meeting and circulate it to the group for comment. The AUC agreed to do so. One of the companies asked how soon the AUC will send out the straw model, but the AUC was not able to commit to a date and indicated that it would be sent out as soon as possible.
 - One customer group indicated that it would be reluctant to comment on the straw model or any other proposed changes to Rule 002 in isolation from the decision of whether or not the Rule 002 data for ATCO Gas North and ATCO Gas South should be reported separately.
 - The AUC reinforced that, prior to any Rule 002 changes, the proposed changes will be incorporated into a proposed draft of the rule, which will then be circulated to this group for comment and then to stakeholders at large for formal comment before it goes to the Commission for final approval.

ACTION: AUC to produce an annual review meeting straw model and circulate it to the group for comment.

2. Penalties

- The AUC brought paragraph 930 of Decision 2012-237 to the group's attention which states the following:

“In addition to establishing new measures and setting targets for those metrics currently without targets, the Commission considers that it is important that companies and Alberta customers understand the consequences that could result from a company's failure to meet service quality targets. This is particularly critical if a pattern of consistent failure arises. Therefore, through the upcoming AUC Rule 002 consultation process, the Commission will develop a penalty structure for these metrics as part of the

administrative penalty scheme authorized under Section 129(3) of the *Electric Utilities Act* and Section 28.3(3) of the *Gas Utilities Act*. The Commission expects that this penalty structure will include escalating penalty amounts commensurate with repeated violations of the targets up to and including the maximum administrative penalty set out in Section 63 of the *Alberta Utilities Commission Act*.”

- The group discussed whether or not specified penalties were required by the decision and concluded that they were not required and that paragraph 930 could include a range of possibilities.
- The group also discussed whether a penalty structure that included specified penalties would be preferable to one that relied on the existing administrative penalties regime to determine on a case-by-case basis the amount of any sanction, if required. One customer group indicated that the size of the penalty should reflect the amount of customer harm and that harm cannot be specified in advance. The group then discussed whether or not customer harm could be measured at all, and the customer group pointed to the measure of energy not served as a form of measurement of harm. However, the customer group did not agree that specified penalties in the current context of Rule 002 are relevant as judgment would be required in order to decide upon an appropriate penalty amount.
- Other parties agreed that judgment should be applied on a case-by-case basis. One customer group indicated that in some cases it may be preferable to have the AUC direct the company to address any problems, rather than imposing an administrative penalty that would go into the government’s general revenue fund. One customer group also explored whether a minimum penalty would ensure compliance with the AUC’s direction, but pointed out that a minimum penalty may not be necessary since the administrative penalty provisions in the *Alberta Utilities Commission Act* allow for up to a million dollars per day sanction.
- The group then explored the idea of a minimum penalty and whether it should be an automatic penalty similar in concept to a parking ticket. There was little support for the minimum penalty approach because of the importance to the companies for the Commission to determine the degree to which a breach was in the company’s control. Also, minimum penalties could potentially fetter the Commission’s powers.
- One party pointed out that the minimum penalty would have to be low enough to allow the Commission to apply judgment, but not so low that it would not serve as a deterrent.
- Another party suggested that the ENMAX approach of applying a penalty through the rates could be a better way to go, as then the money would go back to the customers who are the ones that would have experienced the degradation of service, rather than the penalty going into the general revenue fund. The AUC, however, pointed out that Decision 2012-237 did not appear to endorse using the ENMAX approach of applying penalties for service quality failures in the rate formula.
- Generally there was consensus that the provisions in the *Electric Utilities Act*, the *Gas Utilities Act* and Section 63 of the *Alberta Utilities Commission Act* are sufficient to act as a deterrent for the companies and flexible enough to allow the Commission to apply judgment when taking enforcement action. Therefore, the penalty structure should remain as it is currently, and it is up to the Commission to enforce.
- Should Rule 013 apply or should this be contained within Rule 002?
 - One distributor supported building the applicable parts of Rule 013 into Rule 002, thereby allowing Rule 002 to be self-contained and to not have to rely upon another rule that may not have the same requirements. Others did not express a need to make this change. Generally there was consensus that Rule 013 would be adequately interpreted if an applicable situation arose and accordingly, applicable parts of Rule 013 do not need to be incorporated into Rule 002.

Attendees:

Name	Company
Mark Lowther	AltaGas Utilities Inc.
Nancy J. McKenzie	AltaGas Utilities Inc.
Russell Wintersgill	AltaGas Utilities Inc.
Barry Goy	ATCO Electric
Bob Deyl	ATCO Electric
Larry Shaben	ATCO Electric
Keith Carter	ATCO Gas
Melanie Bayley	ATCO Gas
Ralph Trovato	ATCO Gas
Andrea Laroija	AUC
Anne Glass	AUC
Fino Tiberi	AUC
John Petch	AUC
Doug Evanchuk	City of Calgary
Greg Matwichuk	City of Calgary
Mark Rowe	City of Calgary
Kurtis Hildebrandt	ENMAX Power Corporation
Mike Windsor	ENMAX Power Corporation
Harry Haag	EPCOR Distribution & Transmission Inc.
Rob Reimer	EPCOR Distribution & Transmission Inc.
Brian Murray	FortisAlberta Inc.
Curtis Eck	FortisAlberta Inc.
Deb Crossman	FortisAlberta Inc.
Rob Litzenberger	FortisAlberta Inc.
Rick Cowburn	IPCAA
Russ Bell	UCA